

Duke, Daphne

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From: **Mills Morrison** <millsmorrison@yahoo.com>
 Date: Mon, Apr 15, 2019 at 12:42 PM
 Subject: Re: 2019-67-T Advance Relocation
 To: Pittman, Jenny <jpittman@ors.sc.gov>, Josh Minges <
 Cc: Advance Relocation <movers@advancerelocation.net>

Jenny and Josh:

Attached please find a Motion and proposed Affidavit which I plan to file today, if possible. There may be a few minor tweaks.

Let me know what you think and if you have questions/objections/suggestions.

Thanks,

Mills

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On Monday, April 15, 2019, 9:08:35 AM EDT, Pittman, Jenny <jpittman@ors.sc.gov> wrote:

Mills,

I just realized we have the prehearing conference in this docket later this afternoon, this case totally snuck up on me. The Commission often likes to handle these by phone, I don't know who our hearing examiner is but I will reach out to who I think might be handling it and copy you so we can figure everything out. We have no major issues, just waiting to hear back as to whether your client is joining the SC Tariff Bureau or if they will be creating their own tariff and we haven't seen any shipper witness testimony – most typically file it in advance and get the witness excused or submit an affidavit so you don't have to bring the shipper witness to the hearing.

Please let me know if you have any questions! I will email Josh Minges and we can discuss handling the prehearing conference by phone, unless you'd prefer to attend in person.

Thanks!

Jenny R. Pittman, Esq.
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BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-67-T

Application of Advance Relocation)	
And Storage Systems, Incorporated)	MOTION FOR PERMISSION TO
for a Class E (Household Goods))	PRESENT SHIPPER WITNESS
Certificate of Public Convenience)	TESTIMONY BY AFFIDAVIT
and Necessity for Operation of)	
Motor Vehicle Carrier)	
_____)	

Advance Relocation and Storage Systems, Incorporated ("Advance Relocation" or "Applicant") moves for permission to present the testimony of its shipper witness by affidavit. The Commission's regulation concerning the proof required to support an application for a Certificate of Public and Convenience and Necessity for a Class E mover of household goods with statewide authority is found in S.C. Code Regs. 103-333.

Regarding the testimony of shipper witnesses, which are used to demonstrate that an applicant's services will serve public convenience and necessity, the regulation states: PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses if the applicant applies for authority for more than three continuous counties. If the commission determines that the public convenience and necessity is already being served, the commission may deny the application. The following criteria should be used by the commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public: S.C. Code Reg. 103-133.1 In the interest of judicial economy, the Commission should allow the regulation's requirement of "use of a shipper witness" to be satisfied by the submission of an affidavit. The Commission's practice has been to allow applicants to take the testimony of shipper witnesses by deposition to be used at trial. *See e.g. Application of Midland Movers DOCKET NO. 2018-268-T*

There would be no substantive difference if an applicant were to submit the testimony by affidavit. The Office of Regulatory Staff, or an intervenor, would have the right to contest the adequacy of an affidavit if they believed it inadequate. Challenges to adequacy of shipper witness testimony have been virtually nonexistent due to the Supreme Court's holding that mere anecdotal evidence is insufficient to challenge the "necessity" prong of an application. *Welch Moving & Storage Co v. Pub Serv. Com*, 301 S.C. 259, 261-62, 391 S.E.2d 556, 557 (1990). In *Welch*, the

Court found: Here, in deciding that grant of a certificate to Welch would not serve the public convenience and necessity, PSC relied exclusively upon the testimony of four licensed carriers from the midlands and upstate regions. These carriers, potential competitors of Welch, testified that, due to a decrease in business, existing carriers were left with excess capacity to handle a greater number of moves. Additionally, one carrier testified that increased competition would cause cutbacks, resulting in less expensive but inferior quality service. No expert testimony or statistical surveys were presented to indicate that the public convenience is being served. The carriers' testimony related primarily to concerns that increased competition would adversely affect their businesses. Although detriment to the income of existing carriers is relevant, it is not determinative and "should not in itself defeat an application for additional services." Id. (citation omitted).

Because of *Welch*, the presentation of shipper witness testimony has become a perfunctory exercise, and the current practice of presenting shipper witness testimony by live testimony or deposition is unnecessarily expensive and inconvenient for all involved, including the Commission and its staff. Applicant submits that the submission of an affidavit could serve the same purpose without requiring Applicant to bring a witness to its hearing or hire a court reporter and pay counsel to attend a deposition. To illustrate how affidavit testimony could be presented, Applicant submits as Exhibit A an affidavit form which prompts the shipper witness to testify to the same matters typically covered on the stand or in live testimony.

In the present case, no objections or intervenors have appeared, and the matter appears uncontested. Furthermore, the applicant and counsel for applicant have been in touch with regulatory staff and counsel and the application appears to be mostly in order with the exception of minor details which should be easily resolved. The applicant is located in Jasper County and having its shipper witness travel to Columbia to testify is an unnecessary burden where the matter should be uncontested as to all issues.

Therefore, Applicant respectfully requests the Commission allow it to present the testimony of its shipper witness by affidavit.

Respectfully submitted.

Dated: April 15, 2019
Hardeeville, South Carolina

Law Offices of Darrell Thomas Johnson, Jr., LLC

s/ Mills L. Morrison, Jr.
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BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-67-T

Application of Advance Relocation)
And Storage Systems, Incorporated)
for a Class E (Household Goods))
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Motor Vehicle Carrier)
_____)

AFFIDAVIT OF DARRELL THOMAS
JOHNSON, III

1. PERSONALLY APPEARED before me, DARRELL THOMAS JOHNSON, III, who, being first duly sworn, testified as follows:
2. I am over 21 and otherwise competent to give the testimony in this affidavit. This affidavit is based upon my personal knowledge and I understand it will be relied upon by the South Carolina Public Service Commission and all interested parties regarding the application of Advance Relocation and Storage Systems Incorporated ("Applicant" or "Advance Relocation") for a Class E Certificate of Public Convenience and Necessity for Operation of Motor Carrier. I present this affidavit as a shipper witness in favor of Applicant.
3. For full disclosure, my father is the senior partner in the law firm representing applicant, but that connection does not affect the impartiality of my testimony in this affidavit.
4. I am a lifelong resident of Jasper County and the area which Applicant proposes to service. I have personally observed the housing trends and growth trends of the area.
5. I am a licensed contractor and licensed South Carolina Real Estate Agent and have been involved in the residential real estate market for the area proposed to be served by Applicant for in excess of 20 years.
6. Jasper County and the South Coastal Region of South Carolina has experienced explosive growth in recent decades and promises to experience greater growth in the years to come. Many buyers of residential houses move from other areas and there is a great need for Applicant's services in the area.
7. I am also familiar with the Applicant. Applicant and Applicant's family have been involved in the moving business for several generations and are familiar and reliable and trusted in the field. The area Applicant proposes to serve is in need of a mover just like Applicant. Further, Applicant has the facilities, equipment, staff and expertise sufficient

to serve the area in an exemplary manner. Applicant is fit, willing and able to provide the services for which they seek an application from this Commission.

Sworn to and Subscribed Before Me

This ____ day of _____, 2019

Notary Public for South Carolina

My Commission Expires: _____

Darrell Thomas Johnson, III